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Extension of the term of the permanent judges of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Sixty-first year

Identical letters dated 3 May 2006 from the Secretary-General to the President of the General Assembly and the President of the Security Council

I have the honour to transmit a letter dated 21 March 2006 from Judge Erik Møse, President of the International Criminal Tribunal for Rwanda, which directly relates to the ability of the Tribunal to implement its Completion Strategy (see annex).

In his letter, the President of the Tribunal recalls that the term of office of the permanent judges of the Tribunal will come to an end on 24 May 2007, and states that there are a number of multi-accused trials that are currently under way before the Tribunal that are likely to continue beyond that date.

All single accused trials currently in progress are due to be completed between May 2006 and May 2007. New trials will commence as soon as judges and courtroom space become available and will continue well beyond May 2007. The President of the Tribunal is of the view that it would not be a viable option to delay the commencement of the new trials until after the newly elected judges assume their duties on 25 May 2007 since this would result in a loss of time and make it impossible to respect the deadlines in the Tribunal's Completion Strategy.

This means that most if not all of the permanent judges will be engaged in trials when their four-year term expires on 24 May 2007. Should certain judges not be re-elected, particular cases might have to resume de novo with new judges. The holding of elections in 2007, as envisaged by the Statute, is therefore likely to lead to delays in some trials and to the restarting of entire trials in others.

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Consequently, in order to ensure continuity and the ability of the Tribunal to implement its Completion Strategy as set out in Security Council resolution 1503 (2003) of 28 August 2003 and complete all trials by 2008, the President of the Tribunal has requested that the current term of office of the permanent judges of the Tribunal be extended until 31 December 2008.

On 31 January 2003, the General Assembly, by decision 57/414 A and in accordance with article 12 bis, paragraph 1 (b), of the Tribunal's Statute, elected from a list of candidates approved by the Security Council the following 11 judges to a four-year term of office beginning on 25 May 2003 and to end on 24 May 2007: Mansoor Ahmed (Pakistan); Sergei Aleckseievich Egorov (Russian Federation); Asoka Zoysa Gunawardana (Sri Lanka); Mehmet Güney (Turkey); Erik Møse (Norway); Arlete Ramaroson (Madagascar); Jai Ram Reddy (Fiji); William Hussein Sekule (United Republic of Tanzania); Andrésa Vaz (Senegal); Inés Mónica Weinberg de Roca (Argentina) and Lloyd George Williams (Saint Kitts and Nevis).

When Judge Ahmed resigned, after consultations with the Security Council and the General Assembly and in accordance with article 12 bis, paragraph 2, of the Tribunal Statute, I appointed Khalida Rachid Khan of Pakistan, effective 7 July 2003, for the remainder of Judge Ahmed's term of office.

When Judge Williams resigned, after consultations with the Security Council and the General Assembly and in accordance with article 12 bis, paragraph 2, of the Tribunal Statute, I appointed Charles Michael Dennis Byron of Saint Kitts and Nevis, effective April 2004, for the remainder of Judge Williams' term of office.

When Judge Gunawardana resigned, after consultations with the Security Council and the General Assembly and in accordance with article 12 bis, paragraph 2, of the Tribunal Statute, I appointed Asoka de Silva of Sri Lanka, effective 2 August 2004, for the remainder of Judge Gunawardana's term of office.

Consequently, the permanent judges whose term of office the President of the Tribunal is seeking to extend are:

Charles Michael Dennis Byron (Saint Kitts and Nevis)
Asoka de Silva (Sri Lanka)
Sergei Aleckseievich Egorov (Russian Federation)
Mehmet Güney (Turkey)
Khalida Rachid Khan (Pakistan)
Erik Møse (Norway)
Arlete Ramaroson (Madagascar)
Jai Ram Reddy (Fiji)
William Hussein Sekule (United Republic of Tanzania)
Andrésa Vaz (Senegal)
Inés Mónica Weinberg de Roca (Argentina)

As far as the financial consequences of the President's proposal are concerned, he points out that it is designed to save costs since those judges who have been elected as well as those who have been appointed to serve out an elected term would only have their terms extended until the date when the completion of trials is foreseen rather than being elected for another four years. The Security Council and the General Assembly would then, in 2008, be able to review the status of the Tribunal's permanent judges, including the two judges who at that time are assigned

to the Appeals Chamber, which under the Tribunal's Completion Strategy is expected to complete its work by the end of 2010.

The Statute of the Tribunal does not provide for extending the term of office of the permanent judges. In the absence of such a provision, the approval of the Security Council, as the parent organ of the Tribunal, and of the General Assembly, as the organ that elects its judges, would be needed in order to extend the term of office of the permanent judges until 31 December 2008.

I hereby request that the General Assembly and the Security Council grant such approval.

The President of the Tribunal is of the view that early action is needed in order to provide the Tribunal with the continuity, stability and certainty necessary for the efficient and effective planning of trials. I would therefore appreciate it if the General Assembly and the Security Council take this matter up at their earliest opportunity.

(*Signed*) Kofi A. **Annan**

Annex

[Original: English]

As the mandate of the 11 permanent judges of the International Criminal Tribunal for Rwanda expires in May 2007, elections are likely to take place at the end of 2006 or in early 2007. The purpose of the present letter is to request that the current mandate of the judges be extended to the end of 2008, which according to the Completion Strategy is the deadline for the completion of trials.

Under article 12 bis (3) of the Tribunal Statute, the four-year term of the permanent judges expires on 25 May 2007. The Tribunal is on schedule to respect the deadline set by the Security Council in its resolution 1503 (2003), according to which the ad hoc Tribunals are expected to complete all trials by the end of 2008. Therefore, at the beginning of the next four-year mandate (May 2007 to May 2011), there will be a need for nine permanent trial judges only from May 2007 to December 2008, approximately 19 months. During this important period, continuity will be of the essence in order to ensure efficiency. Extension of the judges' term of office is preferable to elections since it guarantees such continuity.

Five multi-accused trials, involving 21 accused, are currently in progress. Two or possibly three of these cases may have to continue into the next mandate. This is obvious in relation to the *Karemera et al.* case (three accused), which commenced de novo on 19 September 2005. The *Military II* trial (four accused), which is currently approaching the end of the Prosecution case, is also likely to continue after May 2007. In the *Government* case, where the Defence teams are presenting their evidence, it is possible that the trial proceedings will be completed within the current mandate but additional time will be required for deliberations and delivery of judgment.

The six single-accused cases which are currently in progress will be concluded between May 2006 and May 2007. New trials will commence as soon as judges and courtroom space become available. Those cases will continue into the next mandate and it is not a viable option to postpone their commencement until after May 2007. Such a course would result in the loss of valuable time and make it impossible to respect the deadlines contained in resolution 1503 (2003).

Consequently, most if not all of the permanent judges will be engaged in trials when their current four-year term expires in May 2007. Experience shows that it is uncertain whether all of them will be re-elected. In the worse case scenario, this may lead to trials having to commence de novo with new judges. The Security Council has in the past, in some instances, prolonged the mandate of individual judges who were not re-elected. However, this was only done in part-heard cases and not with respect to other judicial activities, thereby leading to underutilization of available judicial resources. In a situation in which virtually all permanent judges will be hearing trials in May 2007, it is clearly preferable to extend their mandate instead of proceeding to elections.

Conducting trials at the international level is a complicated task. Even the most experienced judge from a national jurisdiction needs some time to acquire the necessary institutional knowledge. Replacement of the permanent judges should be avoided at this critical juncture in the Tribunal's lifespan. I am confident that most if

not all of the current permanent judges will assume their responsibility and continue to contribute to the successful completion of the mission of the Tribunal.

A proposal to prolong the mandate of the International Criminal Tribunal for the former Yugoslavia judges, made on 13 January 2004 (S/2004/53, annex), was not taken up by the Security Council. However, the situation of the International Criminal Tribunal for Rwanda is very different from that of the International Criminal Tribunal for the former Yugoslavia. Had the International Criminal Tribunal for the former Yugoslavia request been granted, the judges would have had their mandate extended from November 2005 to December 2008, which computes to 37 months, or approximately twice the 19 months envisaged by the International Criminal Tribunal for Rwanda request.

Towards the end of 2008, the work of the Appeals Chamber will continue. It is unclear at the moment what resources the Appeals Chamber may need to complete its mandate by 2010. The election of 11 permanent International Criminal Tribunal for Rwanda judges (the 2 appeals judges and 9 trials judges) with effect from 25 May 2007 would mean that they would be elected for a four-year term even though most of them might not be required to serve beyond 2008. It would be a better solution to extend their mandate for 19 months and then revisit the issue in 2008, when the situation will be clarified. An extension would also entail financial savings (no costs relating to installation of newly elected judges, repatriation of permanent judges who are not re-elected etc.).

(*Signed*) Erik **Møse**
President